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No. 90-299

In The
Supreme Court Of The United States
October Term, 1990

Waste Conversion, Inc.,
Petitioner

v.

Commonwealth of Pennsylvania,
Respondent

On Petition For Writ of Certiorari
To The Commonwealth Court of Pennsylvania

RESPONDENT'S BRIEF IN OPPOSITION

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QUESTION PRESENTED

Whether section 610(8)(i) of the Solid Waste Management Act of Pennsylvania, which authorizes the imposition of a fine upon a waste treatment facility for the illegal dumping of waste from that facility by a waste hauler hired by the facility, violates the Due Process Clause of the Fourteenth Amendment to the Constitution of the United States?

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NO. 90-299

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WASTE CONVERSION, INC.,
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V.

COMMONWEALTH OF PENNSYLVANIA,
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ON PETITION FOR WRIT OF CERTIORARI TO
THE COMMONWEALTH COURT OF PENNSYLVANIA

RESPONDENT'S BRIEF IN OPPOSITION

Respondent, Commonwealth of Pennsylvania, (hereinafter "the Commonwealth") respectfully requests that this Court deny the petition for writ of certiorari. The opinion of the Commonwealth Court of Pennsylvania is reported at ___ Pa.Commw. _____, 568 A.2d 738 (1990). (Pet. App. A, A1-A9).

STATEMENT OF THE CASE

The Commonwealth of Pennsylvania declines to proceed on the basis of petitioner's statement of the case. Accordingly, respondent incorporates by reference the statement of facts in the opinion by the Commonwealth Court of Pennsylvania. That opinion is reported at ___ Pa.Commw. _____, 568 A.2d 738 (1990). (Pet. App. A, A1-A9). Contrary to petitioner's assertion, this case was not transferred sua sponte because the constitutionality of a state statute appeared to be in issue. Rather, the Superior Court of Pennsylvania properly transferred this case since the Commonwealth Court of Pennsylvania has exclusive jurisdiction of all criminal actions or proceedings for the violation of any regulatory statute administered by any Commonwealth agency. 42 Pa.C.S.

§ 762(a)(2). (Opp. Brief App. A1).

Petitioner also asserts oral argument before the Commonwealth Court was abbreviated. The Commonwealth Court of Pennsylvania conducted oral argument in accordance with the Pennsylvania Rules of Appellate Procedure, Chapter 23, Sessions and Argument. Pa. R.A.P. 2315 (Opp. Brief App. A2).

Finally, although conceding that the truck was loaded in excess of 80,000 pounds, petitioner claims that legal responsibility for operating an overweight vehicle rests solely with the vehicle's owner/operator under the Pennsylvania Motor Vehicle Code 75 P.S. [sic] § 4901(a). (Pet. at 4,n.1) This case does not concern infractions of the Pennsylvania Motor Vehicle Code. Petitioner was not charged with a violation of the Pennsylvania Motor Vehicle Code.

Moreover, petitioner is not blameless for the incident of overloading the vehicle. Petitioner's own employees loaded the driver's truck to 83,500 pounds; that is 3,500 pounds greater than the allowable weight limit under Pennsylvania law. (Pet. App. A, A-2)

REASONS FOR DENYING THE WRIT

The decision of the Commonwealth Court of Pennsylvania is an uneventful application of the Solid Waste Management Act of Pennsylvania to the facts of this case in accordance with due process principles.

Petitioner suggests that Pennsylvania decided an important constitutional question. Respondent submits that this case does not present a constitutional question of any substance. Moreover, petitioner fails to support his contention that the decision is repugnant to the United States Constitution. See 28 U.S.C. § 1257(a).

The Pennsylvania State courts properly applied and followed settled principles of law in resolving petitioner's claim concerning the constitutionality of section 610(8)(i) of the Solid Waste Management Act of Pennsylvania (hereinafter "Act"). This Court should not

grant review merely to reexamine the validity of a state statute in the absence of any conflict with federal law.

Petitioner claims that section 610(8)(i) of the Act, 35 P.S. § 6018.610(8)(i) violates due process because of the imposition of criminal liability on a corporate defendant for the criminal acts of an "independent" contractor. This simply is not the type of issue that justifies review by this Court. The state courts of Pennsylvania properly framed the question flowing from such a claim in light of this Court's precedent and then applied the same precedent in resolving petitioner's claim. The decision of the Commonwealth Court of Pennsylvania does not conflict with any federal precedent. Under the specific circumstances of this case, the imposition of a fine against a corporation does not violate due process.

Nothing about this case requires review by this Court.

Petitioner concedes that the Act is a public welfare statute. The Act, enacted for the general benefit and welfare of the public, contains punitive absolute liability provisions. This reflects a recognition by our state lawmakers that unregulated activity in a highly sophisticated and complex society may cause widespread harm to an innocent citizenry irrespective of an actor's state of mind. Morissette v. United States, 342 U.S. 246 (1952). The Morissette Court, in construing public welfare offense statutes, held that "the guilty act alone makes out the crime." Id. at 256.

Recently, in Liparota v. United States, 471 U.S. 419 (1985), this Court reiterated its recognition of public

welfare offenses. This Court, in Liparota, articulated that "Congress has rendered criminal a type of conduct that a reasonable person should know is subject to stringent public regulation and may seriously threaten the community's health or safety." Id. at 433. Clearly, petitioner, which holds a permit to engage in the environmental business in Pennsylvania, had notice of the provisions of the Act which prohibited its conduct. Here, petitioner, who chose to operate in the waste management business, owes the highest duty of responsibility concerning the proper disposal of waste. Furthermore, this Court set forth that where obnoxious waste materials are involved, the probability of regulation is so great that anyone who deals with them must be presumed to be aware of the regulations.

United States v. International Minerals and Chemical Corp., 402 U.S. 558, 565 (1971).

Petitioner urges this Court to review this case based on hypothetical conduct that the statutory language could arguably embrace. This Court has settled that facial attaches on the validity of statutes are generally not permitted. United States v. Powell, 423 U.S. 87 (1975); United States v. Mazurie, 419 U.S. 544 (1975).

This casc turns solely upon an analysis of the particular facts. The Commonwealth Court of Pennsylvania correctly adjudicated petitioner's claims by examining the specific conduct engaged in by petitioner. Petitioner, a corporation, through its employees, took part in the illegal activity in contravention of the Act by overloading

the waste hauler's truck. The vehicle departed from petitioner's premises in an overloaded condition.Clearly, these practices and procedures by petitioner, a regulated enterprise, inadequately protected the public. The blameworthiness depends not only on the commission of a crime but on the overall reasonableness of corporate practices in opposition to regulatory statutes.

The Commonwealth Court and Common Pleas Court of Pennsylvania found that the Act is a comprehensive scheme designed to protect the public from health hazards resulting from inadequate waste disposal practices. The Commonwealth Court specifically found that a major reason for the legislature's imposition of strict liability was to insure that the people of this Commonwealth are pro-

tected from the dangers associated with waste disposal. (Pet. App., A-6). Certiorari should not be granted to reconsider the validity of the Act based on a mere allegation of a due process violation.

Petitioner asserts that the Pennsylvania state courts failed to consider the chilling effect imposition of liability would have on business activity. This is not a proper reason upon which to grant the petition. The Act applies to anyone in the waste management chain from the time of generation if it occurs in Pennsylvania throughout its handling within Pennsylvania. The Act is a "cradle to grave" regulatory scheme providing public protection against the dangers of improper waste disposal. In interpreting and applying it, the Commonwealth Court adhered to settled prin-

ciples germane to public welfare offense statutes. (Pet. App., A8-A9).

Petitioner asserts this Court could grant review because the Commonwealth Court opinion represents a radical departure from established federal precedent. (Pet. at 12) Petitioner cites no authority for this proposition.

It is well established that criminal sanctions attached to regulatory statutes intended to protect public health, in contrast to statutes based on common law crimes, are construed to effectuate their regulatory purposes. See e.g. United States v. Johnson & Towers, Inc., 741 F.2d 662, 666 (3rd Cir. 1984), cert. denied, Angel v. United States, 469 U.S. 1208 (1985) (unlawful disposal of hazardous waste under the Federal Resource Conservation and Recovery Act, 42 U.S.C. §§ 6901-6992(k); criminal pro-

vision not limited to owners and operators of waste facilities), citing, United States v. Park, 421 U.S. 658, 672-673 (1975); Smith v. California, 361 U.S. 147, 152 (1959); and United States v. Dotterweich, 320 U.S. 277, 280-81 (1943); United States v. Balint, 258 U.S. 250, 251-52 (1922). The court of appeals in Johnson & Towers, enunciated that limiting the class of potential defendants to owners and operators of waste facilities undercuts the purpose of the environmental legislation. Id. at 667. Contrary to petitioner's assertion, the Commonwealth Court of Pennsylvania applied settled principles of law.

Petitioner further asserts that this decision deviates markedly from the Pennsylvania Supreme Court decision of

Commonwealth v. Koczwara, 397 Pa. 575, 155 A.2d 825 (1959). Unequivocally, this is not a valid rationale for this Court to grant review. If the intermediary appellate court failed to follow Pennsylvania precedent, this is a question of state law.[1] Furthermore, contrary to this claim, both the Commonwealth Court and the Common Pleas Courts of Pennsylvania adhered to the principle set forth in Commonwealth v. Koczwara, 397 Pa. 595, 155 A.2d 825 (1959) concerning the imposition of only a fine when an individual is vicariously liable. Petitioner was not charged as an individual but rather as a corporate defendant.

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[1]The Supreme Court of Pennsylvania had the opportunity to review petitioner's claim of a due process violation and declined to do so.

Petitioner claims another reason for this Court to grant review is because of the asserted availability of the impossibility defense. That the Commonwealth Court of Pennsylvania declined to allow this defense based on the facts of the case is not an adequate basis for this Court to hear this case. Petitioner relies on United States v. Park, 421 U.S. 685 (1975), United States v. Wisenfeld Warehouse Co., 376 U.S. 86 (1964) and United States v. Dotterweich, 320 U.S. 277 (1943). These cases are easily distinguishable. Here, the officers of petitioner corporation were not charged.

More importantly, the decision of the Commonwealth Court of Pennsylvania does not conflict with these cases or any other federal decisions. The defense of impossibility asserted in those cases specifically pertained to viola-

tions under the Federal Food, Drug and Cosmetic Act and has rarely been satisfied. 21 U.S.C. § 301 et seq. See e.g., United States v. Y. Hata and Co., 535 F.2d 508, 511-12 (9th Cir.); cert. denied, 429 U.S. 828 (1976); United States v. Starr, 535 F.2d 512, 515-516 (9th Cir. 1976).

The Commonwealth Court of Pennsylvania recognized that Park permitted the affirmative defense of impossibility by an individual defendant thereby avoiding liability if it could be demonstrated that he was powerless to prevent the violation. (Pet. App. A-9)

In addition to not involving an individual defendant, petitioner, a corporation, was far from powerless to prevent the dumping. Petitioner had every opportunity to control in the choice of a waste transporter. The

illegal dumping was not remote. Rather the chain of events that led to the illegal activity was clearly a foreseeable consequence. The overloaded vehicle which departed from Waste Conversion was loaded in excess by the employees of Waste Conversion. Thus, the impossibility defense was properly rejected in accordance with this Court's precedent.

Petitioner's reliance on United States v. Georgetown University, 331 F.Supp. 69 (D. D.C. 1971) provides no cognizable basis for this Court to grant review. Unlike petitioner, the defendant in Georgetown University was not the subject of heavy regulation.

The Pennsylvania Commonwealth Court did not decide an important question of federal law. The Commonwealth Court of Pennsylvania properly considered and

resolved petitioner's claims. No special or important reasons exist for this Court to exercise its discretion and grant the Petition.

CONCLUSION

For the foregoing reasons, the respondent requests the Court to deny the writ of certiorari.

Respectfully Submitted,

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42 Pa.C.S. § 762. Appeals from courts of common pleas

(a) General rule.-Except as provided in subsection (b), the Commonwealth Court shall have exclusive jurisdiction of appeals from final orders of the courts of common pleas in the following cases:

(2) Governmental and Commonwealth regulatory criminal cases.-All criminal actions or proceedings for the violation of any:

(i) Rule, regulation or order of any Commonwealth agency.

(ii) Regulatory, statute administered by any Commonwealth agency subject to Subchapter A of Chapter 5 of Title 2 (relating to practice and procedure of Commonwealth agencies). The term "regulatory statute" as used in this subparagraph does not include any provision of Title 18 (relating to crimes and offenses).

Rule 2315. Time for Argument; Argument Lists

(a) General Rule. Oral argument is not a matter of right and will be permitted only to the extent necessary to enable the appellate court to acquire an understanding of the issues presented. The presiding judge may terminate the argument for any party notwithstanding the fact that the maximum time for argument specified in the applicable provision of these rules has not been exhausted.

(b) Assignment to lists. Argument lists shall consist of the regular list and short list. All cases listed for argument shall be placed upon the regular list unless all the parties upon praecipe to the prothonotary of the appellate court request the case to be placed upon the short list.

(c) Short list. The time for argument of cases on the short list shall be limited to not more than 15 minutes for each side. On days when there are cases on both the short list and on the regular list whose on the short list shall be heard first and in order of listing.

(d) Regular list. The time for argument of cases on the regular list shall be limited to not more than 30 minutes for each side. When there are two or more appeals from the same order, and in joint appeals, even though they raise different or unrelated questions, counsel for all the appellants will be

limited to a total of not more than 30 minutes for argument, and counsel for all the appellees to a total of not more than 30 minutes. The maximum time shall be divided between or among the appellants or between or among the appellees respectively as they may decide, subject to reduction as prescribed in Subdivision (a) of this rule.